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26 October 1989
OCA 3779-89

MEMORANDUM FOR THE RECORD

SUBJECT: Missile Proliferation

1. On 26 October 1989, I attended a meeting with representatives of the National Security Council, Department of Commerce, Department of Defense, Arms Control and Disarmament Agency, Department of State, National Aeronautics and Space Administration and the Office of Management and Budget. The purpose of the meeting was to develop a unified strategy on the three pending missile proliferation bills in light of the hearings scheduled for DOD, ACDA and DOS before the House Foreign Affairs Committee and the Senate Foreign Relations Committee.

2. The representative from the Department of State began by opining that no legislation on missile proliferation would be acceptable. He then commented that all of the bills in question require the President to impose sanctions against violators and that State would oppose any mandatory sanctions. He next discussed the sanction provision relating to companies and expressed concern that sanctions would be imposed for actions which do not violate United States law and that it was difficult to determine what would be a violation. He also expressed concern that the "good faith" exemption would encourage countries to broaden their interpretation of the Missile Technology Control Regime (MTCR). In so far as the bills incorporate sanctions against the violating countries, the State Department representative commented that we already have the authority to cut off US Government assistance and that we currently can and do deny export licenses for non-US Government proposals. The State Department representative also said that the reporting requirement was extremely burdensome, the section authorizing advisory opinions was unworkable and that the definition of MTCR was incorrect in that the Regime is strictly voluntary and is not binding under international law.

3. The Department of Commerce representative agreed with State's comments and added that the President needs flexibility in assessing sanctions. The bills do not allow partial sanctions so an inadvertent violation would be assessed the

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same punishment as that given a blatant violator. The Commerce representative also stated that the US Government already has the authority to impose most of the sanctions listed in the legislations and that the bills would only tend to complicate matters. He also was concerned that the waiver provision was only for "USG end users," that the reporting requirement did not exempt proprietary information and that the bills rely upon the definition of US persons, which is generally not used in Commerce enforcement.

4. The Department of Defense representative also agreed with the previous comments and stated that the United States would not want to apply sanctions against some of the potential violators of the bills, due to our diplomatic and economic relations with those countries. He also stated the opinion that the missile sanctions hurt the United States more than the sanctioned countries.

5. The representative from ACDA agreed with the earlier comments and felt that the legislation would be impossible to administer.

6. I stated that we supported the previous comments and that we were concerned that the mandatory sanctions would expose intelligence sources and methods much the same as we saw in the Chemical and Biological Weapons legislation. I also stated our objection to the language in the waiver provision and said that we would prefer language similar to that in the House version of the CBW bill. My final comment pertained to the concern that we would have to expend tremendous resources in order to comply with the reporting requirement.

7. The representative from NASA agreed with the comments of the group and did not really have anything to add.

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Legislation Division
Office of Congressional Affairs

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